

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ELISA PRICE, individually and as limited
guardian ad litem for her son C.P.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. C13-5890 BHS

ORDER GRANTING MOTION
TO DISMISS WITHOUT
PREJUDICE

This matter comes before the Court on Defendant United States of America's ("Government") motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) (Dkt. 6). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

I. PROCEDURAL & FACTUAL BACKGROUND

On December 28, 2011, Plaintiff Elisa Price ("Price"), individually and as limited guardian ad litem for her son C.P., filed a complaint in Pierce County Superior Court against Chief Leschi Schools and Richard Keller ("Keller"), individually and on behalf of the marital community composed thereof. Dkt. 1-2. The complaint alleges that on May 18, 2010, C.P. was struck by a bus while crossing at a controlled intersection with the

1 crossing signal in his favor. *Id.* at 3. Plaintiff maintains the bus was driven by Keller.
2 Dkt. 8 at 1.

3 On August 15, 2013, Price filed an administrative claim with the Bureau of Indian
4 Affairs (“Bureau”) regarding the alleged May 18, 2010 incident, which is the subject of
5 her complaint. Dkt. 7 at 4-8.

6 On October 8, 2013, the Government removed the action to this Court pursuant to
7 the Federal Tort Claims Act (“FTCA”), substituting the United States as the sole
8 defendant upon certification that Keller was acting within the scope of his employment
9 during the alleged accident. *See* Dkts. 1 and 1-3.

10 On October 16, 2013, the Government filed the instant motion to dismiss Price’s
11 complaint without prejudice on the basis that she failed to exhaust her administrative
12 claims as required by 28 U.S.C. § 2675(a). Dkt. 6 at 2-3. On November 11, 2013, Price
13 responded. Dkt. 8. On November 15, 2013, the Government replied. Dkt. 10.

14 II. DISCUSSION

15 A. Legal Standards

16 Pursuant to 28 U.S.C. § 2675(a), a plaintiff may not pursue a tort claim in federal
17 court against the United States without first presenting an administrative claim to the
18 appropriate federal agency and allowing the agency to consider her claim for six months
19 before she can file a lawsuit in federal court. *See* 28 U.S.C. § 2675(a).

20 The administrative exhaustion requirement at Section 2675(a) is jurisdictional.
21 *See, e.g., Brady v. United States*, 211 F.3d 499, 502 (9th Cir. 2000), *cert. denied*, 531
22 U.S. 1037 (2000); *see also Vacek v. U. S. Postal Service, et al.*, 447 F.3d 1248, 1250-51

1 (9th Cir. 2006), *cert. denied*, 550 U.S. 906 (2007); *Cadwalder v. United States*, 45 F.3d
2 297, 300-01 (9th Cir. 1995); *Burns v. United States*, 764 F.2d 722,724 (9th Cir. 1985).

3 Because the administrative exhaustion requirement is jurisdictional in nature, the FTCA's
4 exhaustion requirements must be strictly construed. *See, e.g., Vacek*, 447 F.3d at 1250-
5 51. Subject matter jurisdiction cannot be waived. *See, e.g., Arbaugh v. Y & H Corp.*, 546
6 U.S. 500, 514 (2006).

7 **B. Application of Standards**

8 The Government argues that because Price did not fulfill the administrative
9 exhaustion requirement prior to filing suit in federal court this Court lacks jurisdiction, as
10 she must allow the Bureau an additional four months to process her complaint before
11 filing suit in federal court. Dkt. 10.

12 Price argues this lawsuit should not be dismissed apparently because she filed an
13 administrative action with the Bureau; the Government failed to submit the complaint and
14 pleadings to the United States Attorney's Office as required by 28 U.S.C. § 2679(c)
15 during the pendency of the state court proceedings; and the Government chose to invoke
16 federal court jurisdiction before the Bureau's time to respond to her complaint had
17 elapsed. *See* Dkt. 8 at 2-3. Alternatively, Price argues that this action should be stayed
18 until February 19, 2013 to allow the Bureau the requisite time to consider her
19 administrative claims and to avoid incurring additional litigation expenses. Dkt. 8 at 3.

20 Although Price maintains, and the Government agrees, that the defendants in the
21 state court action failed to submit the complaint and pleadings to the United States
22 Attorney's Office as required by 28 U.S.C. § 2679(c) (*see id.* at 2), Price cites no

1 authority to support her apparent position that this failure requires the Court to maintain
2 jurisdiction over a case that it does not otherwise have jurisdiction to hear. As the
3 Government correctly notes, and Price acknowledges, Price has not exhausted the
4 administrative process with the Bureau; therefore, the Court has no jurisdiction over this
5 case. *See* 28 U.S.C. § 2675(a); *Brady*, 211 F.3d at 502 (9th Cir. 2000); *Vacek*, 447 F.3d
6 at 1250-51. Further, although Price indicates that the Government invoked the Court's
7 jurisdiction via removal, she neither contests removal as improper or untimely, nor does
8 she provide any authority that the Government's removal cures or waives any
9 jurisdictional defects. Additionally, while a stay of this action may indeed reduce the
10 parties' litigation expenses as Price maintains, she cites no authority, statutory or
11 otherwise, to indicate that this Court should stay a case over which it presently has no
12 jurisdiction. *See* Dkt. 8.

13 **III. ORDER**

14 Therefore, it is hereby **ORDERED** that the Government's motion to dismiss
15 without prejudice (Dkt. 6) is **GRANTED**.

16 Dated this 9th day of December, 2013.

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19 BENJAMIN H. SETTLE
20 United States District Judge
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